

ORDINANCE NO. 858

**AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA ITEMS BY
A MARIJUANA RETAILER IN THE
CITY OF SCAPPOOSE**

WHEREAS, Section 34a of House Bill 3400 (2015) (codified at ORS 475B.345) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city; and

WHEREAS, the Scappoose City Council wishes to exercise that power to tax the sale of marijuana items by a marijuana retailer in the City of Scappoose.

NOW, THEREFORE, THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

SECTION 1. Scappoose Municipal Code is amended by adding a new Chapter 5.19 Marijuana Tax, as provided in Exhibit A.

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance or any intergovernmental agreement with the State of Oregon are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses. In addition, should the indexing of the rate to state law be found unconstitutional or otherwise unenforceable, the rate shall remain at 3%, unless otherwise amended by the City's voters.

SECTION 3. Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Intergovernmental Cooperation. After the effective date of this ordinance, the City may enter into an agreement whereby the State of Oregon, by and through any state department or agency, is responsible for the administration, collection, distribution or enforcement of the tax authorized under this chapter, either in full or in part, without needing to obtain voter approval.

SECTION 5. Repeal. Scappoose Municipal Code Chapter 5.18 is hereby repealed, as of the effective date of this ordinance.

SECTION 6. Referral. This ordinance shall be referred to the electors of Scappoose at the next statewide general election on Tuesday, November 8, 2016.

SECTION 7. Effective Date. This ordinance shall be effective upon certification by the County Elections official that it has received voter approval at an election conducted on November 8, 2016, and further certification by the County Elections official that any

measure on the ballot at the November 8, 2016 election prohibiting the establishment of marijuana entities or licenses, has not received voter approval.

APPROVED: Approved by the City Council of Scappoose this 1st day of August, 2016.



Scott Burge, Mayor

First Reading: July 18, 2016

Second Reading: August 1, 2016

ATTEST:



Susan M. Reeves, MMC, City Recorder

Exhibit A

Chapter 5.19 MARIJUANA TAX

5.19.010	Purpose
5.19.015	Definitions
5.19.020	Tax Imposed
5.19.025	Amount and Payment, Deductions
5.19.030	Marijuana Retailer Responsible for Payment of Tax
5.19.035	Penalties and Interest
5.19.040	Appeal
5.19.045	Refunds
5.19.050	Actions to Collect
5.19.055	Violation
5.19.060	Confidentiality
5.19.065	Audit of Books, Records, or Persons
5.19.070	Forms and Regulations
5.19.075	Intergovernmental Agreement

5.19.010 Purpose

The purpose of this chapter is to impose a three percent tax upon the retail sale of marijuana items by marijuana retailers in the City of Scappoose.

5.19.015 Definitions

As used in this ordinance, unless the context requires otherwise:

1. "Consumer" means a person who purchases, acquires, owns, holds or uses marijuana items other than for purposes of resale.
2. "Director" means the Finance Administrator for the City of Scappoose or his or her designee.
3. "Retail sale price" means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.
4. "Marijuana item" has the meaning given that term in ORS 475B.015(16).
5. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
6. "Marijuana retailer" means any person who is required to be licensed or

registered or has been licensed or registered by the State of Oregon to provide marijuana items to consumers for money, credit, property or other consideration.

7. "Retail sale" or "Sale" means the exchange, gift or barter of a marijuana item by any person to a consumer.
8. "Tax" means either the tax payable by the marijuana retailer or the aggregate amount of taxes due from a marijuana retailer during the period for which the marijuana retailer is required to report collections under this chapter.
9. "Taxpayer" means any person obligated to account to the Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

5.19.020 Tax Imposed

A tax is hereby levied and shall be paid by every marijuana retailer exercising the taxable privilege of selling marijuana items as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.

5.19.025 Amount and Payment, Deductions

In addition to any fees or taxes otherwise provided for by law, every marijuana retailer engaged in the sale of marijuana items in the City of Scappoose shall pay a tax of three percent (3%) of the retail sale price paid to the marijuana retailer of marijuana items or the maximum rate allowed by state law, whichever is greater. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.

5.19.030 Marijuana Retailer Responsible for Payment of Tax

1. Every marijuana retailer shall obtain a business license from the City of Scappoose pursuant to SMC 5.04. The marijuana retailer will indicate on the business license application whether the marijuana retailer is licensed by or registered with the State of Oregon to provide marijuana items to consumers for money, credit, property or other consideration.
2. Every marijuana retailer shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The marijuana retailer may request or the Director may establish shorter reporting periods for any marijuana retailer if the marijuana retailer or Director deems it necessary in order to ensure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.

3. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director.
4. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any marijuana retailer if the Director deems it necessary in order to ensure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by marijuana retailers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.
5. Every marijuana retailer must keep and preserve in an accounting format established by the Director records of all sales made by the marijuana retailer and such other books or accounts as may be required by the Director for a period of three (3) years or until all taxes associated with the sales have been paid, whichever is longer. The City shall have the right to inspect all such records at all reasonable times.

5.19.035 Penalties and Interest

1. Any marijuana retailer who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
2. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 1 and 3 of this section.
3. In addition to the penalties imposed, any marijuana retailer who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
4. Every penalty imposed, and such interest as accrues for violation of this chapter are separate from, and in addition to, the tax imposed on the sale of marijuana items.
5. All sums collected pursuant to the penalty provisions in this section shall be distributed to the City of Scappoose General Fund to offset the costs of auditing

and enforcement of this tax.

5.19.040 Appeal

Any marijuana retailer aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal pursuant to the City Manager within thirty (30) days of the serving or mailing of the determination of tax due. The City Manager shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The City Manager's decision may be appealed to City Council within thirty (30) days of the serving or mailing of the determination. The findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable upon the service of notice.

5.19.045 Refunds

1. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph 2 of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
2. The Director shall have twenty (20) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a marijuana retailer may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The marijuana retailer shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the marijuana retailer is still in business, a credit will be granted against the tax liability for the next reporting period. If the marijuana retailer is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.
3. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

5.19.050 Actions to Collect

Any tax required to be paid by any marijuana retailer under the provisions of this chapter shall be deemed a debt owed by the marijuana retailer to the City. Any such tax

collected by a marijuana retailer which has not been paid to the City shall be deemed a debt owed by the marijuana retailer to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Scappoose for the recovery of such amount. In lieu of filing an action for the recovery, the City of Scappoose, when taxes due are more than thirty (30) days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Scappoose has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.

5.19.055 Violation

1. Violation of this chapter shall constitute a violation pursuant to Chapter 1.08 of this code, General Penalty. It is a violation of this chapter for any marijuana retailer or other person to:
 - a. Fail or refuse to comply as required herein;
 - b. Fail or refuse to furnish any return required to be made;
 - c. Fail or refuse to permit inspection of records;
 - d. Fail or refuse to furnish a supplemental return or other data required by the Director;
 - e. Render a false or fraudulent return or claim; or
 - f. Fail, refuse or neglect to remit the tax to the city by the due date.
2. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

5.19.060 Confidentiality

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:

1. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana items are sold or provided; or
2. The disclosure of general statistics in a form which would not reveal an individual marijuana retailer's financial information; or

3. The disclosure of information to any state agency related to the licensing or registration of the marijuana retailer or when required to carry out any part of this chapter.
4. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or
5. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
6. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

5.19.065 Audit of Books, Records, or Persons

1. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of marijuana retailer's state and federal income tax return, bearing upon the matter of the marijuana retailer's tax return. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director.
2. If the examinations or investigations disclose that any reports of marijuana retailers filed with the Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.
3. The marijuana retailer shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the marijuana retailer paid 95 percent or less of the tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate set by resolution of Council from the date the original tax payment was due.
4. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Scappoose Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

5. Every marijuana retailer shall keep a record in such form as may be prescribed by the Director of all sales of marijuana items. The records shall at all times during the business hours of the day be subject to inspection by the Director or authorized officers or agents of the Director.
6. Every marijuana retailer shall maintain and keep, for a period of three (3) years, all records of marijuana items sold.

5.19.070 Forms and Regulations

The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

1. A form of report on sales and purchases to be supplied to all vendors;
2. The records which marijuana retailers are to keep concerning the tax imposed by this chapter.

5.19.075 Intergovernmental Agreement

The City Council may enter into an IGA with the State of Oregon whereby a state department or agency is responsible for the administration, collection, distribution, or enforcement of the tax authorized by this chapter, either in full or in part. The terms of that agreement shall apply in lieu of and shall supersede conflicting provisions of this chapter but shall not be construed as repealing any provision of this chapter.